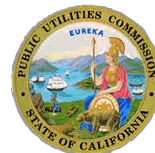


**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

07/24/19
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Order Instituting Investigation on the
Commission's Own Motion Into the
Operations, Practices, and Conduct of the
San Jose Water Company (U168W)
Regarding Overbilling Practices.

I.18-09-003
(Adopted September 13, 2018;
issued September 14, 2018)

**JOINT MOTION OF
THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION
AND SAN JOSE WATER COMPANY
FOR APPROVAL OF SETTLEMENT AGREEMENT**

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July 24, 2019

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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**JOINT MOTION OF
THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION
AND SAN JOSE WATER COMPANY
FOR APPROVAL OF SETTLEMENT AGREEMENT**

In accordance with Rule 12.1 of the Rules of Practice and Procedure ("Rules") of the California Public Utilities Commission ("Commission"), San Jose Water Company ("SJWC") and the Consumer Protection and Enforcement Division ("CPED") (together with SJWC, the "Settling Parties") hereby respectfully move that the Commission approve the *Settlement Agreement Between the Consumer Protection and Enforcement Division and San Jose Water Company* (the "Settlement Agreement") that was entered into and executed by the Settling Parties on July 23, 2019, for the purpose of resolving all outstanding issues presented in the above-captioned proceeding. The Settlement Agreement is appended hereto as **Attachment A**.

I. PROCEDURAL BACKGROUND

The Commission issued this Order Instituting Investigation ("OII") on September 14, 2018 to determine whether SJWC "repeatedly overcharged and double-billed its customers in violation of California Public Utilities Code ("PU Code") Section 532 as well as other Commission Orders."¹ Attached to the OII was a copy of a staff report by CPED entitled *Investigation of Overbilling by San Jose Water Company* ("Staff Report"). On October 15, 2018, SJWC filed its Response to the OII and the Staff Report, providing a

¹ I.18-09-003, *Order Instituting Rulemaking* (Adopted September 13, 2018 and issued September 14, 2018).

detailed account of the procedural and factual background of the bill proration controversy and responding to the principal legal and policy issues addressed in the OII and the Staff Report.²

Water Rate Advocates for Transparency, Equity and Sustainability (“WRATES”) filed a Motion for Party status on October 23, 2018.³ WRATES’s Motion for Party Status was granted at the Prehearing Conference (“PHC”) held on January 7, 2019 before Administrative Law Judge (“ALJ”) Karl Bemederfer.⁴ At the PHC, the Commission identified all the parties, discussed issues of law and fact, and established a tentative procedural schedule.

On February 11, 2019, the Assigned Commissioner issued a Scoping Memo adopting a procedural schedule and identifying the issues to be determined in this proceeding:⁵

1. Did San Jose Water Company overbill its customers for water service during the period from January 1987 to June 2011?
2. If San Jose Water Company overbilled its customers during the above period, should the Commission fine San Jose Water Company or impose some other form of penalty on it?
3. Is this action subject to any statute of limitations including, but not limited to, Section 736 of the Public Utilities Code?

In accordance with the adopted schedule, CPED and WRATES⁶ served prepared direct testimony on March 18, 2019; SJWC served its prepared rebuttal testimony on April 8, 2019; and CPED served prepared surrebuttal testimony on May 6, 2019. At the evidentiary hearing, held and concluded on June 3, 2019, CPED and SJWC presented witnesses who sponsored the submission of their respective prepared testimony (including the Staff Report) into evidence, while WRATES submitted into evidence only a single cross-examination exhibit, Exhibit WRATES-6.

A few days after the evidentiary hearing, CPED and SJWC undertook discussions to explore the possibility of reaching a settlement of contested issues. Those discussions were sufficiently promising to justify deferring the filing of opening briefs, for which the scheduled date was July 1, 2019. Counsel for CPED requested such a deferral on June 26, 2019, and ALJ

² I.18-09-003, *Response of San Jose Water Company (U-168-W) to Order Instituting Investigation* (October 15, 2018).

³ I.18-09-003, *Motion for Party Status of WRATES* (October 23, 2018).

⁴ Tr. 3:20-23 (ALJ Bemederfer).

⁵ I.18-09-003, *Assigned Commissioner’s Scoping Memo and Ruling*, p. 2 (February 11, 2019).

⁶ Although WRATES mailed its prepared testimony to the parties, WRATES declined to enter it into the evidentiary record. Tr. 13:16-27.

Bemesderfer promptly granted an extension of the filing date until July 15, subsequently granting a further extension until August 2, 2019.

Meanwhile, on July 12, 2019, counsel for CPED provided notice to the parties of a telephonic settlement conference to be held July 19, 2019 in accordance with the requirements of Rule 12.1(b). SJWC, CPED, and WRATES participated in that formally noticed settlement conference on July 19, 2019. The Settling Parties continued with discussions and ultimately resolved certain issues of concern, which were reduced to writing in the form of the Settlement Agreement submitted as Attachment A to this Motion. The Settling Parties were unable to resolve all concerns of WRATES. Thus, the Settlement Agreement is not presented as an all-party settlement.

II. MAJOR FEATURES OF THE SETTLEMENT AGREEMENT

The proposed Settlement Agreement is intended to resolve all issues presented in or addressed by the OII and the Staff Report. Specifically, the Settlement Agreement resolves all outstanding issues in this proceeding between SJWC and CPED.

First, the Settlement Agreement resolves the allegations that SJWC failed to prorate monthly service charges in violation of statute and Commission regulations by SJWC's commitment to make a series of payments for the benefit of its customers. The Settlement provides that SJWC will refund \$1,757,237.99 in proration refunds. This refund amount was calculated by CPED for the period of 1987 through May of 2011 to correct for SJWC's failure to apply rate proration of monthly service charges on customer bills for billing periods during which changes in such service charges became effective. These refunds will be issued as credits to current customers in amounts proportional to their current monthly service charges.⁷ Within ten days after issuance of a Commission decision approving the Settlement Agreement, SJWC will file a Tier 1 advice letter to provide refunds to current customers by a one-time credit appearing on their bills as soon as feasible.

For customers currently participating in SJWC's Water Rate Assistance Program, this one-time credit will be increased from the amount calculated for the refund of \$1,757,237.99 to the amount of \$25.00 for each such customer. The total amount of this additional credit is estimated to be approximately \$350,000.

⁷ The monthly service charges paid by SJWC customers vary based on the size of the water meter serving each customer, in accordance with a standard formula long employed for water utility rate design.

In addition, SJWC will invest \$5.0 million in capital investments in its public water system, to be funded by shareholders, initiated within a one-year period following Commission approval of this agreement. SJWC will not earn any return on this investment, nor will it be allowed to recover depreciation from ratepayers over the life of the investment.

The Settlement Agreement also addresses allegations of double-billing by SJWC made in the Staff Report and by representatives of WRATES. The Settlement Agreement recognizes that SJWC denies allegations that SJWC double billed its monthly service charges in connection with the alleged conversion from billing in advance to billing in arrears. The Settling Parties agree that the evidentiary record is not sufficient to support CPED's allegation of such double billing by SJWC.

If the Commission approves the Settlement Agreement in its entirety, which the Settling Parties respectfully urge it to do, that approval will resolve all of the outstanding issues in this proceeding.

III. BURDEN OF PROOF

Rule 12.1(d) of the Commission's Rules requires that a settlement be "reasonable in light of the whole record, consistent with law, and in the public interest" in order to receive Commission approval. As outlined below, the Settling Parties believe that the Settlement Agreement reflects carefully developed, well-supported, and appropriate compromises of the positions of the Settling Parties. Accordingly, the Settling Parties respectfully submit that the Settlement Agreement, as Rule 12.1(d) requires, is reasonable in light of the whole record, consistent with law, and in the public interest.

A. The proposed Settlement Agreement is reasonable in light of the whole record.

CPED sent a series data requests to SJWC as part of its investigation before the OII was adopted and during the course of this proceeding, to which SJWC provided prompt and sufficient responses. These materials, in conjunction with the thorough testimony provided by witnesses sponsored each of the Settling Parties and admitted into evidence following cross-examination of each witness, provided the basis for substantive negotiation of issues in this proceeding. The specific total of proration amounts that SJWC is to credit to customers was calculated based on

the evidence presented in this proceeding.⁸ The Settling Parties met and discussed the contested issues in good faith, negotiated in defense of their respective positions, and considered a variety of proposals to resolve the issues. This process led to a series of compromises and agreements on the terms of the Settlement Agreement. The proposed Settlement Agreement that resulted from this intensive process is reasonable in light of the whole record developed in the course of this proceeding.

B. The proposed Settlement Agreement is consistent with the law.

The issues resolved in the proposed Settlement Agreement are within the scope of the proceeding. The payments SJWC has agreed to make under the terms of the Settlement Agreement will directly benefit its customers and provide sufficient restitution for any amount of past overcharges indicated by the evidentiary record. The Settling Parties are aware of no statutory provision or prior Commission decision or orders that would be contravened or compromised by the proposed Settlement Agreement. Therefore, the proposed Settlement Agreement is consistent with the law.

C. The proposed Settlement Agreement is in the public interest.

The Commission has a well-established policy favoring settlement of disputes that are fair and reasonable in light of the whole record. This policy reduces the expense of litigation, conserves scarce Commission resources, and allows parties to “reduce the risk that litigation will produce unacceptable results.”⁹ Making customers whole with respect to the proration issue is paramount for both CPED and SJWC. Throughout the course of the investigation and this proceeding, SJWC responded promptly and has made continuing efforts to respond to the allegations of overbilling and to resolve the issues presented in conformance with guidance from the Commission and Commission staff.

The Settlement Agreement specifies that its combination of credits and investment constitutes the full and final restitution by SJWC to SJWC customers for the years that SJWC failed to apply rate proration of monthly service charges on customer bills for billing periods during which changes in such service charges became effective. The proposed Settlement

⁸ Because SJWC was unable to extract sufficient data from billing system records prior to June 2011 to support timely refund calculations, the Parties agreed to apply CPED’s estimation method. See Exhibit CPED-2 (Bañuelos), page 3, line 11 to page 6, line 26; Exhibit SJW-2 (Zacharisen), page 5, line 9 to page 6, line 2; Exhibit CPED-3 (Bañuelos), page 2, line 15 to page 3, line 8.

⁹ *Re San Diego Gas and Electric Company*, Decision 92-12-019, 46 CPUC 2d 538, 553.

Agreement also serves the public interest because it will provide direct benefits to SJWC customers in the form of the one-time customer credit (in increased amounts for customers currently enrolled in SJWC's Water Rate Assistance Program) and by the investment of \$5 million in SJWC's public water system at no cost to customers. For all these reasons, the proposed Settlement Agreement is in the public interest.

IV. THE SETTling PARTIES HAVE COMPLIED WITH THE REQUIREMENTS OF RULE 12.1(B)

Commission Rule 12.1(b) requires parties, prior to signing any settlement, to convene at least one settlement conference, with notice and opportunity to all parties to participate, for the purpose of discussing settlements in the proceeding. Such notice is required to be provided at least seven days before the settlement conference is held. On July 12, 2019, counsel for CPED notified all parties to this proceeding of the time and place for a settlement conference, which was convened via teleconference on July 19, 2019. Representatives of all parties participated in the telephonic settlement conference. On July 23, 2019, the Settling Parties completed the execution of the proposed Settlement Agreement, in compliance with the rules for notice and opportunity for participation set forth above.

V. FURTHER PROCEDURES

Rule 12.2 accords all parties the opportunity to file comments contesting all or part of a settlement within 30 days of the date that a motion for adoption of the settlement is served and provides for reply comments to be filed within 15 days thereafter. Rule 12.3 provides for the setting of a hearing on a contested settlement, if appropriate. As noted above, WRATES has declined to execute the proposed Settlement Agreement. Even assuming that WRATES files comments expressing concerns about the Settlement Agreement, the Settling Parties expect that there will not be remaining disputed issues of material fact warranting the holding of further evidentiary hearings. Of course, if the Assigned Commissioner or the presiding ALJ wishes to have the Settling Parties present witnesses to testify in explanation or support of the Settlement Agreement, the Settling Parties are fully prepared and willing to do so.

VI. CONCLUSION

As demonstrated above, the Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest. Therefore, the Settling Parties respectfully move for the Commission to approve and adopt the Settlement Agreement as attached hereto as **Attachment A**, without modification, to resolve all remaining issues in this proceeding and to close the OIL.

Respectfully submitted,

CONSUMER PROTECTION AND
ENFORCEMENT DIVISION

/s/ Travis T. Foss

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Attorneys for SAN JOSE WATER
COMPANY

July 24, 2019

ATTACHMENT A

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the
Commission's Own Motion into the
Operations, Practices and Conduct of the San
Jose Water Company (U168W) Regarding
Overbilling Practices.

Investigation 18-09-003
(Adopted September 13, 2018;
issued September 14, 2018)

**SETTLEMENT AGREEMENT BETWEEN
THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION
AND SAN JOSE WATER COMPANY**

I. GENERAL PROVISIONS

A. Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Commission’s Consumer Protection and Enforcement Division (“CPED”) and San Jose Water Company (“SJWC”), each referred to individually as a “Party” and together as “the Settling Parties,” have agreed on the terms of this Settlement Agreement, which they now submit for review, consideration, and approval by Administrative Law Judge Karl Bemederfer and the Commission.

B. This Settlement Agreement is intended to resolve all issues presented in or addressed by the Commission’s Order Instituting Investigation (“OII”) 18-09-003 or by the Staff Report, entitled “Investigation of Overbilling by San Jose Water Company,” which was submitted by Victor Bañuelos of CPED, dated August 16, 2018, and attached to the OII. Specifically, this Settlement Agreement resolves all outstanding issues in this proceeding between SJWC and CPED.

C. Specific issues that the Settling Parties agree to resolve through this Settlement Agreement are set forth in Section II, below.

D. Because this Settlement Agreement represents a compromise of the Settling Parties' positions with respect to the issues addressed herein, the Settling Parties have agreed upon the resolution of each issue addressed in the Settlement Agreement on the basis that its approval by the Commission should not be construed as an admission or concession by either Party regarding any matter of fact or law that may have been in dispute in this proceeding. Furthermore, consistent with Rule 12.5 of the Commission's Rules, the Settling Parties intend that the approval of this Settlement Agreement by the Commission should not be construed as a precedent or statement of policy of any kind for or against either Party in any current or future proceeding with respect to any issue addressed in the Settlement Agreement.

E. The Settling Parties agree that this Settlement Agreement is an integrated agreement, so that if the Commission rejects or modifies any portion of this Settlement Agreement or modifies the obligations placed upon SJWC from those that the Settlement Agreement would impose, each Party shall have the right to withdraw. Furthermore, the Settlement Agreement is being presented as an integrated package such that Settling Parties are agreeing to the Settlement Agreement as a whole rather than agreeing to specific elements of the Settlement Agreement.

F. This Settlement Agreement is the product of a process of direct negotiation between the Settling Parties. The other party to this proceeding, WRATES, participated in the settlement process, but is not a party to the Settlement Agreement. Accordingly, the Settlement Agreement is not presented as an all-party settlement.

G. The Settling Parties agree that no signatory to the Settlement Agreement assumes any personal liability as a result of his or her execution of this document. All rights and remedies of the Settling Parties with respect to the Settlement Agreement are limited to those available before the Commission.

H. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument.

I. This Settlement Agreement constitutes the entire agreement between the Settling Parties and supersedes all prior or contemporaneous agreements, negotiations, representations, warranties, and understandings of the Settling Parties with respect to the subject matter set forth herein or otherwise relevant to this proceeding.

II. RESOLUTION OF SPECIFIC ISSUES

A. Issue 1: Failure to prorate monthly service charges

1. SJWC will refund \$1,757,237.99 in proration refunds calculated by CPED for the period of 1987 through May of 2011. SJWC will issue credits to current customers in amounts proportional to their monthly service charges (based upon their meter sizes) and calculated to refund \$1,757,237.99, which is the amount of proration refunds calculated by CPED for the period of 1987 through May of 2011. Within ten (10) days after issuance of a Commission decision approving the Settlement, SJWC will file a Tier 1 advice letter to provide refunds to current customers by a one-time credit appearing on their bills as soon as feasible.

2. The one-time credit to customers currently on the Water Rate Assistance Program will be increased from the amount calculated for the refund of \$1,757,237.99 to the amount of \$25 for each such customer. The total amount of this additional credit is estimated to be approximately \$350,000.

3. SJWC will invest \$5.0 million in capital investments in its public water system, to be funded by shareholders, initiated within a one-year period following Commission approval of this agreement. SJWC will not earn any return on this investment, nor will it be allowed to recover depreciation from ratepayers over the life of the investment.

4. The parties agree that this combination of credits and investment constitutes the full and final restitution by SJWC to SJWC customers for the years that

SJWC failed to apply rate proration of monthly service charges on customer bills for billing periods during which changes in such service charges became effective.

B. Issue 2: Double billing

1. The parties agree that evidence in the record is not sufficient to support CPED's allegation of SJWC double billing its monthly service charges in connection with the alleged conversion from billing in advance to billing in arrears. SJWC denies that such alleged double billing occurred.

III. CONCLUSION

The parties mutually believe that, based on the terms and conditions stated above, this Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

Respectfully submitted,

CONSUMER PROTECTION AND
ENFORCEMENT DIVISION

By: _____

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July 23, 2019

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July 23, 2019

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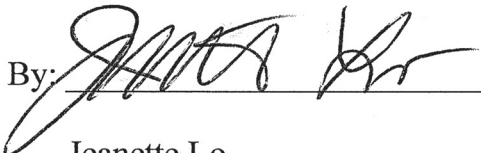
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III. CONCLUSION

The parties mutually believe that, based on the terms and conditions stated above, this Settlement Agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

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